

1 REBECCA EISEN, State Bar No. 096129
 2 THERESA MAK, State Bar No. 211435
 3 M. MICHAEL COLE, State Bar No. 235538
 MORGAN, LEWIS & BOCKIUS, LLP
 4 One Market, Spear Street Tower
 San Francisco, CA 94105-1126
 Tel: 415.442.1000
 Fax: 415.442.1001
 reisen@morganlewis.com
 tmak@morganlewis.com
 mcole@morganlewis.com

7 DARYL S. LANDY, State Bar No. 136288
 MORGAN, LEWIS & BOCKIUS LLP
 8 2 Palo Alto Square
 3000 El Camino Real, Suite 700
 9 Palo Alto, CA 94306-2212
 Tel: 650.843.4000
 10 Fax: 650.843.4001
 dlandy@morganlewis.com

11 Attorneys for Defendants
 12 CBS RADIO INC. (formerly known as "Infinity
 Broadcasting Corporation"), CBS CORPORATION,
 13 INFINITY BROADCASTING CORPORATION
 (erroneously sued as "Infinity Broadcasting Inc."),
 14 and VIACOM INC.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 C 07 2948 JL

19 TERRY SAIDEL and GINA FONG,
 20 individually and on behalf of all others
 similarly situated,

21 Plaintiffs,
 22 vs.
 23 CBS RADIO, INC., a Delaware
 24 corporation; CBS CORPORATION, a
 Delaware corporation; INFINITY
 25 BROADCASTING, INC., a Delaware
 corporation; VIACOM, INC., a Delaware
 26 Corporation; and DOES 1 through 10,
 27 inclusive.,

28 Defendants.

Case No.

**NOTICE OF REMOVAL OF ACTION TO
 THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF
 CALIFORNIA**

1-SF/7555952.1

NOTICE OF REMOVAL

1 Defendants CBS Radio Inc. (formerly known as "Infinity Broadcasting Corporation"),
 2 CBS Corporation (formerly known as "Viacom Inc."), Infinity Broadcasting Corporation
 3 (erroneously sued as "Infinity Broadcasting, Inc."), and Viacom Inc. (collectively, "Defendants")
 4 give notice that this action is hereby removed from the Superior Court of the State of California
 5 for the County of Alameda, to the United States District Court for the Northern District of
 6 California. Defendants remove this matter pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and
 7 1453, and state that this Court has jurisdiction over the action pursuant to the Class Action
 8 Fairness Act of 2005.

9 As and for their Notice of Removal, Defendants plead as follows:

10 1. This lawsuit is a civil action within the meaning of the Acts of Congress relating to
 11 removal of causes. *See* 28 U.S.C. § 1453.

12 2. Plaintiffs Terry Saidel and Gina Fong instituted this civil action in the Superior
 13 Court of the State of California for the County of Alameda on or about May 3, 2007, with the
 14 assigned case number being RG07324137.

15 3. This action was therefore commenced after the effective date of the Class Action
 16 Fairness Act of 2005, Pub. L. No. 109-2 (enacted Feb. 18, 2005) ("CAFA"), *codified at* 28 U.S.C.
 17 §§ 1332(d), 1453, and 1711-1715.

18 4. The Summons and Complaint were served upon Defendants CBS Corporation,
 19 CBS Radio Inc., Infinity Broadcasting Corporation (erroneously sued as "Infinity Broadcasting,
 20 Inc."), and Viacom Inc. on or about May 8, 2007 by process server. True and correct copies of
 21 the Summons, Proofs of Service of Summons, Notices of Service of Process, Civil Case Cover
 22 Sheet, and Complaint are attached hereto as **Exhibit A**, and are incorporated by reference herein.

23 5. On or about May 16, 2007, Defendant CBS Radio Inc. was served with a Notice of
 24 a Complex Determination and Case Management hearing, a true and correct copy of which is
 25 attached hereto as **Exhibit B**.

26 6. Defendants' Answer to Plaintiff's Unverified Complaint was filed with the
 27 Alameda County Superior Court and served on Plaintiff's counsel on June 5, 2007. A true and
 28 correct copy of the Answer is attached hereto as **Exhibit C**.

1 7. Because this Notice of Removal is filed within thirty days of service of the
 2 Summons and Complaint upon the Defendants, it is timely under 28 U.S.C. §§ 1446(b) and 1453.

3 8. This lawsuit was brought by putative representative persons on behalf of a
 4 purported class of individuals. Complaint, ¶¶ 1, 21. As such, this matter is a “class action” as
 5 that term is defined pursuant to 28 U.S.C. §§ 1332(d) (1) (B) and 1453.¹

6 9. This action originally could have been filed in this Court under
 7 28 U.S.C. § 1332(d) because this matter was brought as a class action, complete diversity of
 8 citizenship exists between one or more members of the class and Defendants, and the amount in
 9 controversy exceeds, in the aggregate, \$5,000,000, exclusive of interest and costs. Removal is
 10 therefore proper pursuant to 28 U.S.C. §§ 1446 and 1453.

11 **I. DIVERSITY OF CITIZENSHIP EXISTS**

12 10. Plaintiff Terry Saidel is, and was at the institution of this civil action, and at all
 13 times intervening, a citizen and resident of California. Complaint, ¶ 8.

14 11. Plaintiff Gina Fong is, and was at the institution of this civil action, and at all times
 15 intervening, a citizen and resident of California. Complaint, ¶ 9.

16 12. Plaintiffs seek to represent a class of account executives who have worked for one
 17 or more of the Defendants from May 3, 2003 through May 3, 2007, within the State of California.
 18 Complaint, ¶ 21.

19 13. On December 12, 2005, Defendant Infinity Broadcasting Corporation (erroneously
 20 sued as “Infinity Broadcasting, Inc.”) changed its name to CBS Radio Inc. Defendant CBS
 21 Radio Inc. (formerly known as Infinity Broadcasting Corporation) is, and was at the time of the
 22 institution of this civil action, and at all times intervening, a Delaware corporation with its
 23 principal place of business (where the majority of its executive and administrative functions are
 24 performed) in New York. During the period that CBS Radio Inc. was known as Infinity
 25 Broadcasting Corporation, it was also a Delaware Corporation with its principal place of business

27 1 Defendants do not concede, and reserve the right to contest at the appropriate time, Plaintiffs'
 28 allegations that this action can properly proceed as a class action. Defendants further do not
 concede that Plaintiffs' allegations constitute a cause of action under applicable California law.

1 (where the majority of its executive and administrative functions were performed) in New York.

2 14. Effective January 1, 2006, the various business entities previously under the
 3 Viacom Inc. umbrella were split into a “new” Viacom Inc. and CBS Corporation, which is the old
 4 Viacom corporation renamed.² Defendant CBS Corporation (formerly known as Viacom Inc.) is
 5 and was at the time of the institution of this civil action, and at all times intervening, a Delaware
 6 corporation with its principal place of business (where the majority of its executive and
 7 administrative functions are performed) in New York. Viacom Inc., as it existed prior to
 8 January 1, 2006, was also a Delaware corporation with its principal place of business (where the
 9 majority of its executive and administrative functions were performed) in New York.

10 15. The business activities of the Defendants, at the time of the institution of this civil
 11 action, and at all times intervening, did not and do not substantially predominate in any one state.

12 16. As a result, Defendants are not now, and were not at the time of the institution of
 13 this civil action, citizens and/or residents of the State of California within the meaning of the Acts
 14 of Congress relating to the removal of causes.

15 17. Based on the Complaint, therefore, members of the purported class are citizens of
 16 a State different from that of Defendants.

17 **II. THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS SATISFIED**

18 18. Pursuant to CAFA, the claims of the individual members in a class action are
 19 aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000.
 20 See 28 U.S.C. § 1332(d) (6).

21 19. In addition, Congress intended for federal jurisdiction to be appropriate under
 22 CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the
 23 plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g.,

25 ² The “new” Viacom Inc. is not a successor to any of the other named Defendants, has no
 26 relationship to CBS Radio Inc., and did not employ the named Plaintiffs or putative class
 27 members, as described in the complaint. In any event, the “new” Viacom Inc. is, and was at the
 28 time of the institution of this civil action, a Delaware corporation with its principal place of
 business (where the majority of its executive and administrative functions are performed) in New
 York.

1 damages, injunctive relief, or declaratory relief)." (Senate Judiciary Report, S. REP. 109-14, at
 2 42.)

3 20. In the Complaint, Plaintiffs seek to represent a class of all account executives
 4 (including, but not limited to, senior account executives, regional account executives, national
 5 account executives, and others in a similar job capacity) who have at any time within the past four
 6 years been employed by Defendants in California and who were allegedly subjected to
 7 Defendants' "business expense reimbursement policy and were not covered by the a collective
 8 bargaining agreement." Complaint, ¶ 21.

9 21. Plaintiffs allege claims for unreimbursed business expenses pursuant to California
 10 Labor Code § 2802 on behalf of themselves and each of the putative class members. *See, e.g.*,
 11 Complaint, ¶¶ 23-30. Plaintiffs further allege a derivative claim for restitution of alleged
 12 unreimbursed business expenses pursuant to California Business and Professions Code § 17200
 13 on behalf themselves and each of the putative class members. *See, e.g.*, Complaint, ¶¶ 37-52.

14 22. Plaintiffs allege that Labor Code § 2802 requires Defendants to "indemnify his or
 15 her employee[s] for all necessary expenditures or losses incurred . . . in direct consequence of the
 16 discharge of [their] duties." Complaint, ¶ 24. Plaintiffs further allege that they and putative
 17 class members were not reimbursed for expenses as a result of their use of their motor vehicles,
 18 including liability insurance, gas, parking, mileage, and other travel related expenses.
 19 Complaint, ¶ 25. In addition, Plaintiffs allege that they and putative class members were not
 20 reimbursed for out-of-pocket expenses for food, beverage, entertainment, and client and
 21 prospective client gifts. Complaint, ¶ 26. Finally, Plaintiffs allege that they and putative class
 22 members incurred other expenses through the use of cell-phones and other communication
 23 devices. Complaint, ¶ 27.

24 23. For thirteen months over the time period of January 2006 through March of 2007,
 25 Plaintiff Gina Fong submitted expense reimbursement reports totaling \$2,258.58 or, on average,
 26 \$173.51 per work month. Currently, and during each month of the four year statutory period (or
 27 48 work month period) prior to the filing of the Complaint, approximately 250 account executives
 28 were employed by one or more of the Defendants in California. Assuming that Plaintiff Fong's

1 average monthly expenses are typical of each of the other putative class members, as she has
 2 alleged, the aggregate expenses for all account executives for alleged unreimbursed business
 3 expenses would equal \$2,082,120.

4 24. The Complaint also alleges claims on behalf of the entire putative class of
 5 terminated account executives for waiting time penalties pursuant to California Labor Code § 203
 6 as well as a derivative claim pursuant to California Business and Professions Code § 17200. *See*,
 7 e.g., Complaint, ¶¶ 31-52.

8 25. Plaintiffs allege that under section 201, discharged account executives must be
 9 paid all wages due and owing upon discharge. Complaint, ¶ 32. Plaintiffs further allege that
 10 pursuant to section 202, all wages due and owing must be paid within 72 hours to those
 11 employees who quit. Complaint, ¶ 33. Pursuant to section 203, Plaintiffs claim that account
 12 executives that were terminated are due waiting time penalties of up to 30 work days at their
 13 regular rate of pay as a result of Defendants' alleged failure to reimburse them for necessarily
 14 incurred business expenses at termination. Complaint, ¶¶ 34-35.

15 26. Plaintiff Saidel is a former account executive who worked until July of 2006.
 16 Complaint, ¶ 8. At the time of his termination, Plaintiff Saidel's compensation was \$136,511.00
 17 per year. Plaintiff Fong is also a former account executive who worked through April 2, 2007.
 18 Complaint, ¶ 9. At the time of her termination, Plaintiff Fong's compensation was \$95,000.00
 19 per year. Averaging the compensation for Plaintiffs Saidel and Fong, their "daily" rate of pay
 20 was \$445.21. If Plaintiffs' compensation is typical of other putative class members, as alleged,
 21 and assuming Plaintiffs' can recover on their theories and allegations, then under their theory of
 22 the case, the more than 600 former account executives who worked in California within the past
 23 four years could recover waiting time penalties for 30 days, and the aggregate amount of recovery
 24 would be potentially \$ 8,013,780.

25 27. Further, the Complaint also seeks attorneys' fees. *See*, Prayer for Relief, ¶ L.
 26 Attorneys' fees are properly included in determining the amount in controversy. *Sanchez v. Wal-*
 27 *Mart Stores, Inc.*, 2007 WL 1345706, *2 (E.D.Cal. 2007) ("attorney's fees, if authorized by
 28 statute or contract, are also part of the calculation"). Assuming Plaintiffs can recover on their

1 theories and allegations, under their theory of the case, they would undoubtedly argue that they
 2 would be entitled to receive attorneys' fees of approximately 25% of the total recovery or
 3 \$2,523,975. *Cf. In re Quintus Securities Litigation*, 148 F.Supp.2d 967, 973 (N.D.Cal. 2001)
 4 (noting in the class action settlement context, that the benchmark for setting attorneys' fees is 25
 5 percent of the common fund).

6 28. Thus, although Defendants deny Plaintiffs' allegations and deny that they or the
 7 class that they purport to represent are entitled to the relief for which they have prayed, based on
 8 Plaintiffs' allegations, theories, and prayer for relief, the amount in controversy would exceed the
 9 \$5,000,000 threshold set forth under 28 U.S.C. § 1332(d)(2)

10 **III. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED**

11 29. As set forth above, this Notice of Removal is filed within thirty days of service of
 12 the Summons and Complaint upon Defendants.

13 30. Venue is proper in this district, pursuant to 28 U.S.C. §1441(a), because it
 14 embraces the county in which the removed action has been pending.

15 31. The Summons and Complaint attached as **Exhibit A**, the Notice of Hearings
 16 attached as **Exhibit B**, and the answer, attached hereto as **Exhibit C**, constitute all the process,
 17 pleadings, and orders in this case.

18 32. Defendants will serve Plaintiffs with this Notice of Removal and will file a copy of
 19 this Notice of Removal with the clerk of the state court in which the action is pending, as required
 20 under 28 U.S.C. § 1446(d).

21 33. The prerequisites for removal under 28 U.S.C. §§ 1441 and 1453 have been met.

22 34. If any question arises as to the propriety of the removal of this action, Defendants
 23 request the opportunity to present both a brief and oral argument in support of their position that
 24 this case is removable.

25 ///

26 ///

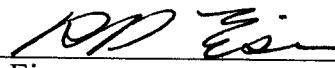
27 ///

28 ///

1 WHEREFORE, Defendants, desiring to remove this case to the United States District
2 Court for the Northern District of California, being the district of said Court for the County in
3 which the action is now pending, pray that the filing of this Notice of Removal shall effect the
4 removal of the suit to this Court.

5
6 Dated: June 6, 2007

MORGAN, LEWIS & BOCKIUS LLP

7
8 By 

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Rebecca Eisen
Attorneys for Defendants
CBS RADIO INC. (formerly known as
"Infinity Broadcasting Corporation"), CBS
CORPORATION, INFINITY
BROADCASTING CORPORATION
(erroneously sued as "Infinity Broadcasting
Inc."), and VIACOM INC.

EXHIBIT A

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

CBS RADIO, INC., a Delaware corporation; CBS CORPORATION, a Delaware corporation; INFINITY BROADCASTING, INC., a Delaware corporation; VIACOM, INC., a Delaware Corporation; and DOES 1 through 10, inclusive,

10

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Terry Saidel and Gina Fong, individually and on behalf of all others similarly situated, and the general public,

5677325

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED ALAMEDA COUNTY

MAY -3 2007

CLERK OF SUPERIOR COURT

BY *Alphonse Oates*
DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):
Superior Court of Alameda County
Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER:
(Número del Caso): **P G 0 7 3 2 4 1 3**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Aaron Kaufmann SBN: 148580
Hinton, Alfert & Sumner
1646 N. California Blvd. Suite 600
Walnut Creek, CA 94596

Alphonse Oates

DATE: **MAY -3 2007**(Fecha) **PAT S. SWEETEN**Clerk, by _____ Deputy _____
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. January 1, 2004)

SUMMONS

Legal
Solutions
Plus

Page 1 of 1
Code of Civil Procedure §§ 412.20, 465

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Bar number, and address):

Aaron Kaufmann SBN: 148580
Hinton, Alfert & Summer
1646 N. California Blvd. Suite 600

Walnut Creek, CA 94596

TELEPHONE NO.:

E-MAIL ADDRESS (Optional): kaufmann@hinton-law.com

FAX NO. (Optional): (25.932.3412)

ATTORNEY FOR (Name): Terry Saidel, Gina Fong (Plaintiffs)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda

STREET ADDRESS: 1225 Fallon Street

MAILING ADDRESS:

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME: Rene C. Davidson Courthouse

PLAINTIFF/PETITIONER: Terry Saidel and Gina Fong

DEFENDANT/RESPONDENT: CBS RADIO Inc.

FILED
ALAMEDA COUNTY

MAY 11 2007

CLERK OF THE SUPERIOR COURT

By *John D.* Deputy

CASE NUMBER:

KG
PC07324137

Ref. No. or File No.:

PROOF OF SERVICE OF SUMMONS

(Separate proof of service is required for each party served.)

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
 - summons
 - complaint
 - Alternative Dispute Resolution (ADR) package
 - Civil Case Cover Sheet (served in complex cases only)
 - cross-complaint
 - other (specify documents):
- a. Party served (specify name of party as shown on documents served): CBS Radio, Inc.
 - Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
- Address where the party was served: CSC Lawyers Incorporating Service, 2730 Gateway Oaks Dr., Suite 100, Sacramento, CA 95833
- I served the party (check proper box)
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 5/8/07 (2) at (time): 10:45 AM
 - by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Terry Saidel and Gina Fong	CASE NUMBER: PC07324137
DEFENDANT/RESPONDENT: CBS RADIO Inc.	

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): (2) from (city):
 (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
 (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant.
 b. as the person sued under the fictitious name of (specify):
 c. as occupant.
 d. On behalf of (specify):

under the following Code of Civil Procedure section:

<input checked="" type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 415.46 (occupant)
	<input type="checkbox"/> other:

7. Person who served papers

a. Name:
 b. Address:
 c. Telephone number:
 d. The fee for service was: \$
 e. I am:

(1) not a registered California process server.
 (2) exempt from registration under Business and Professions Code section 22350(b).
 (3) registered California process server:
 (i) owner employee independent contractor.
 (ii) Registration No.:
 (iii) County:

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 5/8/07

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name Aaron Kaufmann SBN: 14800 Hinton, Alfert & Sumner 1646 N. California Blvd. Suite 600		Bar number, and address: Walnut Creek, CA 94596 TELEPHONE NO.: E-MAIL ADDRESS (Optional): kaufmann@hinton-law.com	FAX NO. (Optional): (25.932.3412)
ATTORNEY FOR (Name): <u>Terry Saidel, Gina Fong (Plaintiffs)</u>			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse		CLERK OF THE SUPERIOR COURT By <u>Debra Penick</u> Deputy	
PLAINTIFF/PETITIONER: Terry Saidel and Gina Fong		CASE NUMBER: <i>BS</i> PC07324137	
DEFENDANT/RESPONDENT: CBS Corporation		Ref. No. or File No.:	

PROOF OF SERVICE OF SUMMONS

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - summons
 - complaint
 - Alternative Dispute Resolution (ADR) package
 - Civil Case Cover Sheet (served in complex cases only)
 - cross-complaint
 - other (specify documents):
3. a. Party served (specify name of party as shown on documents served): CBS Corporation
 - Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served: CSC Lawyers Incorporating Service, 2730 Gateway Oaks Dr., Suite 100, Sacramento, CA 95833
5. I served the party (check proper box)
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 5/8/07 (2) at (time): 10:45 AM
 - by substituted service. On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or a declaration of mailing is attached.
 - I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Terry Saidel and Gina Fong DEFENDANT/RESPONDENT: CBS Corporation	CASE NUMBER: PC07324137
---	----------------------------

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): (2) from (city):
 with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
 to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant.
b. as the person sued under the fictitious name of (specify):
c. as occupant.
d. On behalf of (specify):

under the following Code of Civil Procedure section:

<input checked="" type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 415.46 (occupant)
	<input type="checkbox"/> other:

7. Person who served papers

a. Name:
b. Address:
c. Telephone number:
d. The fee for service was: \$
e. I am:
(1) not a registered California process server.
(2) exempt from registration under Business and Professions Code section 22350(b).
(3) registered California process server:
(i) owner employee independent contractor.
(ii) Registration No.:
(iii) County:

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 5/8/07

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, bar number, and address):

Aaron Kaufmann SBN: 148...

Hinton, Alfert & Sumner

1646 N. California Blvd. Suite 600

Walnut Creek, CA 94596

TELEPHONE NO.:

FAX NO. (Optional): (25.932.3412

E-MAIL ADDRESS (Optional): kaufmann@hinton-law.com

ATTORNEY FOR (Name): Terry Saidel, Gina Fong (Plaintiffs)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda

STREET ADDRESS: 1225 Fallon Street

MAILING ADDRESS:

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME: Rene C. Davidson Courthouse

PLAINTIFF/PETITIONER: Terry Saidel and Gina Fong

DEFENDANT/RESPONDENT: Viacom, Inc.

FILED
ALAMEDA COUNTY

MAY 11 2007

CLERK OF THE SUPERIOR COURT

By *John S. Fong*

CASE NUMBER:

RS

PC07324137

Deputy

Ref. No. or File No.:

PROOF OF SERVICE OF SUMMONS

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents):
3. a. Party served (specify name of party as shown on documents served): Viacom, Inc.
 - b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served: CSC Lawyers Incorporating Service, 2730 Gateway Oaks Dr., Suite 100, Sacramento, CA 95833
5. I served the party (check proper box)
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 5/8/07 (2) at (time): 10:45 AM
 - b. by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Terry Saidel and Gina Fong	CASE NUMBER: PC07324137
DEFENDANT/RESPONDENT: Viacom, Inc.	

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

- (1) on (date):
- (2) from (city):
- (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (specify):
- c. as occupant.
- d. On behalf of (specify):

under the following Code of Civil Procedure section:

<input checked="" type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 415.46 (occupant)
	<input type="checkbox"/> other:

7. Person who served papers

- a. Name:
- b. Address:
- c. Telephone number:
- d. The fee for service was: \$
- e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) registered California process server:
 - (i) owner employee independent contractor.
 - (ii) Registration No.:
 - (iii) County:

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 5/8/07

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

► (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Bar number, and address):

Aaron Kaufmann SBN: 148580
Hinton, Alfert & Sumner
1646 N. California Blvd. Suite 600

Walnut Creek, CA 94596

TELEPHONE NO.: (25.932.3412)

E-MAIL ADDRESS (Optional): kaufmann@hinton-law.com

ATTORNEY FOR (Name): Terry Saidel, Gina Fong (Plaintiffs)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda

STREET ADDRESS: 1225 Fallon Street

MAILING ADDRESS:

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME: Rene C. Davidson Courthouse

PLAINTIFF/PETITIONER: Terry Saidel and Gina Fong

DEFENDANT/RESPONDENT: Infinity Broadcasting Corporation

FILED
ALAMEDA COUNTY

MAY 11 2007

CLERK OF THE SUPERIOR COURT
By John B. Purcell Deputy

CASE NUMBER:

RS
PC07324137

Ref. No. or File No.:

PROOF OF SERVICE OF SUMMONS

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents):
3. a. Party served (specify name of party as shown on documents served): Infinity Broadcasting Corporation

b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served: CSC Lawyers Incorporating Service, 2730 Gateway Oaks Dr., Suite 100, Sacramento, CA 95833
5. I served the party (check proper box)
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 5/8/07 (2) at (time): 10:45 AM I informed him or her of the general nature of the papers.
 - b. by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Terry Saidel and Gina Fong	CASE NUMBER: PC07324137
DEFENDANT/RESPONDENT: Infinity Broadcasting Corporation	

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): _____ (2) from (city): _____

(3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)

(4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section): _____

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant.
 b. as the person sued under the fictitious name of (specify): _____
 c. as occupant.
 d. On behalf of (specify): _____

under the following Code of Civil Procedure section:

<input checked="" type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 415.46 (occupant)
	<input type="checkbox"/> other: _____

7. Person who served papers

a. Name: _____
 b. Address: _____
 c. Telephone number: _____
 d. The fee for service was: \$ _____
 e. I am:

(1) not a registered California process server.
 (2) exempt from registration under Business and Professions Code section 22350(b).
 (3) registered California process server:
 (i) owner employee independent contractor.
 (ii) Registration No.: _____
 (iii) County: _____

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 5/8/07



(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)



Notice of Service of Process

JVM / ALL
 Transmittal Number: 5135871
 Date Processed: 05/08/2007

Primary Contact: Anthony Bongiorno
 CBS Corporation
 Corporate & Securities
 51 West 52nd Street (19-13)
 New York, NY 10019

Copy of transmittal only provided to: Naomi Waltman
 Susanna Lowy Esq.

Entity:	CBS Corporation Entity ID Number 0169178
Entity Served:	CBS Corporation
Title of Action:	Terry Saldel vs. CBS Radio, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Labor / Employment
Court:	Alameda Superior Court, California
Case Number:	PC07324137
Jurisdiction Served:	California
Date Served on CSC:	05/08/2007
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Aaron Kaufmann 925-932-3412

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
 CSC is SAS70 Type II certified for its Litigation Management System.
 2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@csclinfo.com



Notice of Service of Process

AL2 / ALL
Transmittal Number: 5135974
Date Processed: 05/08/2007

Primary Contact: Anthony Bongiorno
CBS Corporation
Corporate & Securities
51 West 52nd Street (19-13)
New York, NY 10019

Copy of transmittal only provided to: Naomi Waltman
Susanna Lowy Esq.

Entity:	CBS Radio Inc. Entity ID Number 2029395
Entity Served:	CBS Radio, Inc.
Title of Action:	Terry Saidel vs. CBS Radio, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Labor / Employment
Court:	Alameda Superior Court, California
Case Number:	PC07324137
Jurisdiction Served:	California
Date Served on CSC:	05/08/2007
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Aaron Kaufman 925-932-6006

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com



Notice of Service of Process

AL2 / ALL
Transmittal Number: 5135985
Date Processed: 05/08/2007

Primary Contact: Anthony Bongiorno
CBS Corporation
Corporate & Securities
51 West 52nd Street (19-13)
New York, NY 10019

Copy of transmittal only provided to: Naomi Waltman
Susanna Lowy Esq.

Entity:	Infinity Broadcasting Corporation Entity ID Number 2029395
Entity Served:	Infinity Broadcasting Inc.
Title of Action:	Terry Saidel vs. CBS Radio, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Labor / Employment
Court:	Alameda Superior Court, California
Case Number:	PC07324137
Jurisdiction Served:	California
Date Served on CSC:	05/08/2007
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Aaron Kaufmann 925-832-6008

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cecinfo.com

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street address, and address):

Aaron Kaufmann SBN: 148580
Hinton, Alfert & Summer
1646 N. California Blvd. Suite 600Walnut Creek, CA 94596
TELEPHONE NO: 925.932.6006 FAX NO: 925.932.3412
ATTORNEY FOR (Name): Terry Saidel, Gina Fong (Plaintiffs)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda

STREET ADDRESS: 1225 Fallon Street

MAILING ADDRESS:

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME: Rene C. Davidson Courthouse

CASE NAME: Saidel v. CBS Radio, Inc., et al.

5677317

FILED ALAMEDA COUNTY

MAY -3 2007

CLERK OF SUPERIOR COURT

by California Cities
DEPUTY

CIVIL CASE COVER SHEET

 Unlimited Limited
(Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)

Complex Case Designation

 Counter JoinderFiled with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

D.G. 732413

JUDGE:

DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

 Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

 Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

 Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

 Wrongful termination (36)
 Other employment (15)

Contract

 Breach of contract/warranty (06)
 Collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

 Eminent domain/inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

 Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

 Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403) Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

 Enforcement of judgment (20)

Miscellaneous Civil Complaint

 RICO (27)
 Other complaint (not specified above) (42)
 Miscellaneous Civil Petition
 Partnership and corporate governance (21)
 Other petition (not specified above) (43)2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties d. Large number of witnesses

b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court

c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Three

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 27, 2007

Aaron Kaufmann SBN: 148580

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CIVIL CASE COVER SHEET

Legal
Solutions
PlusCal. Rules of Court, rules 3.220, 3.400-3.403;
Standards of Judicial Administration, § 19

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care
Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip
and fall)
Intentional Bodily Injury/PD/WD
(e.g., assault, vandalism)
Intentional Infliction of
Emotional Distress
Negligent Infliction of
Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business
Practice (07)
Civil Rights (e.g., discrimination,
false arrest) (*not civil
harassment*) (08)
Defamation (e.g., slander, libel)
(13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice
(*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer
or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open
book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections
Case
Insurance Coverage (*not provisionally
complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent
domain, landlord/tenant, or
foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal
drugs, check this item; otherwise,
report as Commercial or
Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court
Case Matter
Writ—Other Limited Court Case
Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(*arising from provisionally
complex case type listed above*)
(41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of
County)
Confession of Judgment (*non-
domestic relations*)
Sister State Judgment
Administrative Agency Award
(*not unpaid taxes*)
Petition/Certification of Entry of
Judgment on Unpaid Taxes
Other Enforcement of Judgment
Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified
above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-
harassment*)
Mechanics Lien
Other Commercial Complaint
Case (*non-tort/non-complex*)
Other Civil Complaint
(*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate
Governance (21)
Other Petition (*not specified above*)
(43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult
Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late
Claim
Other Civil Petition



5677321

1 AARON KAUFMANN, CA Bar No. 148580
 2 DAVID P. POGREL, CA Bar No. 203787
 3 HINTON, ALFERT & SUMNER
 4 1646 N. California Blvd., Suite #600
 Walnut Creek, California 94596
 Telephone: (925) 932-6006
 Facsimile: (925) 932-3412

FILED ALAMEDA COUNTY
 MAY -3 2007
 CLERK OF SUPERIOR COURT
 BY *Christopher J. Lee*
 DEPUTY

5 MORRIS J. BALLER, CA Bar No. 048928
 6 GOLDSTEIN, DEMCHAK, BALLER,
 BORGEN & DARDARIAN
 7 300 Lakeside Drive, Suite 1000
 Oakland, California 94612
 8 Telephone: (510) 763-9800
 Facsimile: (510) 835-1417

9 MICHAEL SINGER, CA Bar No. 115301
 10 CHRISTOPHER OLSEN, CA Bar No. 236928
 COHELAN & KHOURY
 11 605 "C" Street, Suite 200
 San Diego, CA 92101
 12 Telephone: (619)595-3001
 Facsimile: (619)595-3000

13 Attorneys for Plaintiffs and the Putative Class

14
 15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 FOR THE COUNTY OF ALAMEDA

17
 18 TERRY SAIDEL and GINA FONG, individually
 and on behalf of all others similarly situated,

19 Plaintiffs,

20 v.

21 CBS RADIO, INC., a Delaware corporation;
 22 CBS CORPORATION, a Delaware corporation;
 23 INFINITY BROADCASTING, INC., a
 Delaware corporation; VIACOM, INC., a
 24 Delaware Corporation; and DOES 1 through 10,
 inclusive,

25 Defendants.

26 Case No. **P G 0 7 3 2 4 1 3 7**

CLASS ACTION

COMPLAINT FOR:

- (1) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);
- (2) WAITING TIME PENALTIES (LABOR CODE § 203);
- (3) UCL VIOLATIONS (BUS. & PROF. CODE § 17200-04)

DEMAND FOR JURY TRIAL

27 ///

28 ///

1 Plaintiffs Terry Saidel and Gina Fong ("Plaintiffs"), on behalf of themselves and all others
2 similarly situated (hereinafter "Class Members") complain and allege as follows:

3 **I. INTRODUCTION**

4 1. This is a class action, under California Code of Civil Procedure § 382, seeking
5 reimbursement for business expenses, and interest thereon; waiting time penalties; declaratory
6 relief; injunctive and other equitable relief; and reasonable attorneys' fees and costs, under
7 California Labor Code §§ 2802, 218.5 and 203 and Code of Civil Procedure § 1021.5, on behalf of
8 Plaintiffs and all other individuals who are or have been employed as radio and radio-related
9 advertising salespeople (hereinafter "Account Executives") by Defendants CBS Radio, Inc., CBS
10 Corporation, Infinity Broadcasting, Inc. and/or Viacom, Inc. (hereinafter "Defendants") in
11 California during the four years prior to the filing of this action and who paid business expenses for
12 which they did not receive reimbursement from Defendants. Plaintiffs, on behalf of themselves
13 and the Class Members, also seek injunctive relief and restitution of all unjust enrichment
14 Defendants have enjoyed from its failure to reimburse expenses.

15 2. The "Class Period" is designated as the period from four years prior to the filing of
16 this action through the trial date based upon the allegation that the violations of California's wage
17 and hour laws, as described more fully below, have been ongoing for at least the past four years,
18 are continuing at present, and will continue until enjoined by the Court.

19 3. Defendants have willfully failed and refused, and continue to fail and refuse, to
20 timely pay business expenses incurred by current and former Account Executives in the regular
21 course of their duties as Defendants' employees, as required by Labor Code § 2802.

22 **II. JURISDICTION**

23 4. This Court has jurisdiction over Plaintiffs' and Class Members' claims for business
24 expenses under Labor Code § 2802.

25 5. This Court has jurisdiction over Plaintiffs' and Class Members' claims for waiting
26 time penalties under Labor Code § 203.

27 ///

28

6. This Court has jurisdiction over Plaintiffs' and Class Members' claims for injunctive relief and restitution of ill-gotten gains arising from Defendants' unlawful business practices, under California's Unfair Competition Law ("UCL"), Business & Professions Code §§ 17203 and 17204.

III. VENUE

7. Venue as to Defendants is proper in the Superior Court of this County, under Code of Civil Procedure § 395.5. Each of the Defendants is a foreign corporation, maintains corporate offices in New York, and has not filed a designation of principal place of business in California with the California Secretary of State. As such, venue is proper in any county. Further, the unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within the State of California and within Alameda County. Defendants have employed numerous Class Members, including Plaintiff Gina Fong, who have incurred un-reimbursed business expenses while conducting Defendants' business in Alameda County during the Class Period.

IV. PARTIES

8. Plaintiff Terry Saidel resides in California. Plaintiff Saidel was employed by Defendants from approximately 1993 to approximately July 2006. During the relevant times herein Plaintiff served as a senior account executive at KNX, a radio station owned by Defendants and located in Los Angeles, California. Plaintiff Saidel was subject to Defendants' unlawful business expense reimbursement policies and/or practices set forth herein.

9. Plaintiff Gina Fong resides in California, in Alameda County. Plaintiff Fong was employed by Defendants from approximately December 2005 through April 2, 2007. She spent her entire tenure with Defendants working as a senior account executive in Defendants' offices in San Francisco, California. She served Defendants' clients throughout the San Francisco Bay Area, including clients located in Alameda County. Plaintiff Fong was subject to Defendants' unlawful business expense reimbursement policies and/or practices set forth herein.

10. Defendant CBS Radio, Inc. (“CBS Radio”) is a Delaware Corporation and is a wholly-owned subsidiary of Defendant CBS Corporation (“CBS Corp.”).

1 11. CBS Corp. is a Delaware Corporation. CBS Corp. presently owns and operates
2 approximately 26 radio stations in California and has owned and operated additional stations in
3 California during the Class Period. Plaintiffs and the class of similarly situated Account
4 Executives sold advertising for these CBS radio stations during the Class Period.

5 12. Defendant Infinity Broadcasting Corporation ("Infinity") was a Delaware
6 Corporation. Plaintiffs allege, based upon information and belief, that CBS Corp. and/or CBS
7 Radio acquired radio stations in California from Infinity. Plaintiff Saidel and other similarly
8 situated Account Executives worked at the Infinity stations both before and after the acquisition by
9 CBS Corp. and/or CBS Radio. Infinity's corporate status is listed with the California Secretary of
10 State as "surrender." However, the name "Infinity Broadcasting" appears on paychecks and/or pay
11 stubs issued to Account Executives in California during the Class Period, including pay stubs
12 issued to Plaintiff Saidel.

13 13. Viacom Inc. is a Delaware Corporation. From prior to the Class Period up until
14 2006, Viacom was the parent company of CBS Corp. and CBS Radio. Viacom's name also
15 appears on paychecks and/or pay stubs issued to Account Executives, including Plaintiff Saidel,
16 during the Class Period.

17 14. All of Plaintiffs' claims stated herein are asserted against Defendants and any of
18 their predecessors, successors and/or assigns.

19 15. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiffs, who
21 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
22 are informed and believe, and based thereon allege, that each of the Defendants designated herein
23 as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs
24 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
25 Defendants designated hereinafter as DOES when such identities become known.

26 16. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
28

1 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
2 legally attributable to the other Defendants.

3 **V. FACTUAL BACKGROUND**

4 17. Defendants operate, and at all times during the liability period have done business,
5 throughout California.

6 18. Since at least four years prior to the filing of this action, Defendants have
7 maintained a business expense policies and/or practices that deny lawful compensation to their
8 account executives. Those policies and/or practices cause Account Executives to pay for necessary
9 expenses in direct consequence of discharging their sales duties on behalf of Defendants. These
10 expenses include, but are not limited to: maintenance of an automobile and all travel-related
11 expenses, including vehicle insurance, gasoline, parking, and mileage incurred while traveling for
12 business; cellular phones; personal digital assistants (PDA's); restaurant meals, food and beverages
13 provided to Defendants' clients and potential clients; and gifts for Defendants' clients and potential
14 clients. Defendants have maintained these same business expense policies and/or practices or
15 substantially similar ones throughout the Class Period.

16 19. Defendants are aware that their Account Executives regularly incur business
17 expenses in the discharge of their duties, as employees, in excess of any stipends or
18 reimbursements that may be provided to Account Executives or some of them, but Defendants fail
19 and refuse to reimburse them for such business expenses incurred by Account Executives as they
20 solicit and sell radio and radio-related advertising to Defendants' clients and prospective clients.

21 20. Plaintiffs and Class Members have been harmed by Defendants' unlawful business
22 expense policies and/or practices in that they were not paid for certain business expenses incurred
23 while employed by Defendants.

24 **VI. CLASS ACTION ALLEGATIONS**

25 21. Plaintiffs brings this action, on behalf of themselves and all others similarly situated,
26 as a class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiffs seek to
27 represent is composed of and defined as all persons who have been employed by Defendants in
28 California as account executives, senior account executives, regional account executives, national

1 account executives, and/or in a similar job capacity (collectively "Account Executives") at any
2 time from four years prior to the filing of this action through trial who were subject to Defendants'
3 business expense reimbursement policy and were not covered by a collective bargaining
4 agreement.

5 22. This action has been brought and may properly be maintained as a class action
6 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation, e proposed class is easily ascertainable, and Plaintiffs are proper representatives of the
8 Class:

9 a. Numerosity: The potential members of the Class as defined are so numerous
10 and so diversely located throughout California, that joinder of all the members of the Class is
11 impracticable. While the precise number of Class Members has not been determined at this time,
12 Plaintiffs are informed and believe that Defendants have employed more than 100 Account
13 Executives in California subject to Defendants' business expense reimbursement policy at all times
14 during the Class Period and due to employee turnover the number of Class Members is much larger
15 than the number of Account Executive positions at any one time. Joinder of all members of the
16 proposed class is not practicable.

17 b. Commonality: There are questions of law and fact common to the Plaintiffs
18 and the Class that predominate over any questions affecting only individual members of the Class.
19 These common questions of law and fact include, without limitation:

20 (i) Whether Plaintiffs and Class Members incurred un-reimbursed
21 business expenses in the discharge of their duties as employees, for such items as automobile use
22 and maintenance, parking, use of telephones and mobile communications equipment, meals and
23 gifts for clients of Defendants, and similar business expenses.

24 (ii) Whether Defendants intended, suffered and permitted, and/or were
25 aware that Plaintiffs and Class Members incur such business expenses in the discharge of their
26 duties as employees.

27 (iii) Whether Defendants failed and/or refused to reimburse business
28 expenses incurred by Plaintiffs and Class Members in the discharge of their duties.

(iv) Whether Defendants' failure to reimburse business expenses incurred by Plaintiffs and Class Members was the result of, and/or pursuant to, a business policy or regular practice of Defendants.

(v) Whether Defendants' failure to reimburse business expenses incurred by Plaintiffs and Class Members was willful.

(vi) Whether Plaintiffs and Class Members whose employment with Defendants terminated during the Class Period were owed wages or compensation due from Defendants, in the form of un-reimbursed business expenses, at the time of their termination, which have not been paid.

(vii) Whether Defendants violated Labor Code § 2802 by denying Plaintiffs and Class Members reimbursement for their business expenses.

(viii) Whether Defendants violated Business and Professions Code § 17200 by failing to pay business expenses for Plaintiffs and Class Members.

(ix) Whether Defendants have violated Labor Code §§ 201 and 202, by failing, upon termination, to timely pay Account Executives for the expenses incurred in discharge their sales duties.

(x) The proper formula(s) for calculating restitution, damages, and waiting time penalties owed to Plaintiffs and the Class.

c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both Plaintiffs and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of law as alleged herein, in similar ways and for the same types of expenses.

d. Adequacy of Representation: Plaintiffs are members of the Class and will fairly and adequately represent and protect the interests of the Class Members. Plaintiffs' interests do not conflict with those of Class Members. Counsel who represent the Plaintiffs are competent and experienced in litigating large wage and hour and other employment class actions, and will adequately devote time and resources to the case and otherwise adequately represent the Class.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or practices of not reimbursing business expenses. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because Plaintiffs and the Class seek injunctive relief that will affect all class members in a common way, and will also allow for full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining their unlawful business expense reimbursement policy. If this action is not certified as a Class Action, it will be impossible as a practical matter for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendants, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION

**FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(LABOR CODE § 2802)**

23. The allegations of Paragraphs 1 through 22 are realleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the above-described class of similarly situated Account Executives.

24. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

25. In order to discharge their sales-related duties for Defendants, Plaintiffs and similarly situated Account Executives had to use their own personal motor vehicles for work-

1 related travel. However, Defendants did not fully pay for expenses incurred as a result of
 2 Plaintiffs' and similarly situated Account Executives' use of their own motor vehicles for work,
 3 including for liability insurance, gas, parking, mileage and other travel related expenses.
 4

5 26. Plaintiffs and similarly situated Account Executives also had to pay out of their
 6 own money for food, beverage, entertainment and/or other gifts for Defendants' clients and
 7 prospective clients as part of their sales-related duties for Defendants. However, Defendants did
 8 not fully pay for or otherwise fully reimburse Plaintiffs and similarly situated Account Executives
 9 for such expenses.

10 27. Plaintiffs and similarly situated Account Executives also incurred other
 11 necessary business expenses in carrying out their sales-related duties, including use of their
 12 personal cell phones, and/or similar communication devices.
 13

14 28. Plaintiffs and similarly situated Account Executives are entitled to
 15 reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under
 16 Labor Code § 2802.

17 29. As a result of Defendants' violations of Labor Code § 2802, Defendants are
 18 also liable for civil penalties and attorneys' fees and costs under Labor Code § 218.5.
 19

20 30. Plaintiffs, on behalf of themselves and similarly situated Account Executives,
 21 request relief as described below.

22 **SECOND CAUSE OF ACTION**

23 **WAITING TIME PENALTIES**
 24 **(LABOR CODE §§ 201, 202 & 203)**

25 31. The allegations of Paragraphs 1 through 30 are realleged and incorporated
 26 herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and
 27 the above-described class of similarly situated Account Executives.
 28

32. Labor Code § 201 requires an employer who discharges an employee to pay all

1 compensation due and owing to that employee immediately upon discharge.

2 33. Labor Code § 202 requires an employer to pay all compensation due and owing
 3 to an employee who quits within 72 hours of that employee quitting, unless the employee provides
 4 at least 72 hours notice of quitting, in which case all compensation is due at the end of the
 5 employee's final day of work.

6 34. Labor Code § 203 provides that if an employer willfully fails to pay
 7 compensation promptly upon discharge, as required by § 201 or § 202, then the employer is liable
 8 for waiting time penalties in the form of continued compensation of up to 30 work days.

9 35. Defendants willfully failed and refused to timely pay Account Executives,
 10 including Plaintiffs, all wages owed by failing to pay them for necessarily incurred business
 11 expenses upon termination. As a result, Defendants are liable to former Account Executives,
 12 including Plaintiffs, for waiting time penalties, together with interest thereon and reasonable
 13 attorneys' fees and costs, under Labor Code § 203.

14 36. Plaintiffs, on behalf of all terminated Account Executives, request relief as
 15 described below.

16

17 **THIRD CAUSE OF ACTION**

18 **UNFAIR COMPETITION LAW VIOLATIONS**
 19 **(BUS. PROF. CODE § 17200)**

20 37. The allegations of Paragraphs 1 through 36 are realleged and incorporated
 21 herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and
 22 the above-described class of similarly situated Account Executives.

23 38. Business & Professions Code § 17200 prohibits unfair competition in the form
 24 of any unlawful, unfair, or fraudulent business act or practice.

25 39. Business & Professions Code § 17204 allows "any person who has suffered
 26 injury in fact and has lost money or property" to prosecute a civil action for violation of the UCL.

27 40. Beginning at an exact date unknown to Plaintiffs, but at least four years prior to

1 the filing of this action, and continuing to the present, Defendants have committed unlawful, unfair,
2 and/or fraudulent business acts and practices as defined by Business & Professions Code § 17200,
3 by engaging in the following:

4 a. failing to reimburse and indemnify Plaintiffs and similarly situated Account
5 Executives for employment-related business expenses and losses; and
6 b. failing to pay all accrued wages to Account Executives upon termination of
7 their employment by not reimbursing them for necessarily incurred business expenses.

8 41. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate
9 acts and practices for purposes of Business and Professions Code § 17200.

10 42. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent
11 acts and practices described herein, Defendants have received and continue to hold ill-gotten gains
12 belonging to Plaintiffs and Class Members in the form of unpaid wages and un-reimbursed
13 employee business expenses. As a direct and proximate result of Defendants' unlawful business
14 practices, Plaintiffs and Class Members have suffered economic injuries including, but not limited
15 to wages, out-of-pocket business expenses, and waiting time penalties. Defendants have profited
16 from their unlawful, unfair, and/or fraudulent acts and practices in the amount of those business
17 expenses and interest accrued thereon, and waiting time penalties that should have been paid to
18 Plaintiffs and similarly situated Account Executives.

19 43. Plaintiffs and similarly situated Account Executives are entitled to restitution
20 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses,
21 interest, and waiting time penalties accruing from four years prior to the filing of this action to the
22 date of such restitution.

23 44. Plaintiffs and similarly situated Account Executives are entitled to enforce all
24 applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

25 45. Plaintiffs' success in this action will enforce important rights affecting the public
26 interest. In this regard, Plaintiffs sue on behalf of themselves and others similarly situated.
27 Plaintiffs seek and are entitled to reimbursement of business expenses with interest, waiting time
28

1 penalties, declaratory and injunctive relief, and any other appropriate remedy.

2 46. Injunctive relief is necessary and appropriate to prevent Defendants from
3 continuing and repeating its unlawful, unfair and fraudulent business acts and practices alleged
4 above.

5 47. In order to prevent Defendants from profiting and benefiting from their wrongful
6 and illegal acts and continuing those acts, Plaintiffs request an order requiring Defendants to
7 disgorge all the profits and gains they have reaped and restore such profits and gains to the
8 Account Executives, from whom they were unlawfully taken.

9 48. Plaintiffs have assumed the responsibility of enforcement of the laws and lawful
10 claims specified herein. There is a financial burden incurred in pursuing this action which is in the
11 public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Code of Civil
12 Procedure § 1021.5.

13 49. By all of the foregoing alleged conduct, Defendants have committed, and are
14 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
15 meaning of Business & Professions Code §17200 *et seq.*

16 50. As a direct and proximate result of the UCL violations described above, Plaintiffs,
17 other Account Executives have all suffered significant losses and Defendants have been unjustly
18 enriched.

19 51. Pursuant to Business & Prof. Code §17203, Plaintiffs, and other Account
20 Executives are entitled to restitution of money acquired by Defendants by means of its unfair
21 business practices, in amounts not yet ascertained but to be ascertained at trial; and Plaintiffs and
22 Class Members are further entitled to injunctive relief against Defendants' continuation of its
23 unfair business practices and a declaration that Defendants' business practices are unlawful, unfair,
24 and/or fraudulent within the meaning of the statute.

25 52. Plaintiffs, on behalf of themselves and similarly situated Account Executives,
26 request relief as described below.

27 ///

28 ///

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;

B. That the Court declare that Defendants' business expense policies and/or practices violate California law by not treating all business expenses incurred by Account Executives in the discharge of their duties as employees of Defendants as business costs to be paid or reimbursed by the Defendant employers.

C. That the Court declare that Defendants' business expense policies and/or practices violate California law by causing a forfeiture of accrued wages.

11 D. That the Court declare that Defendants' business expense policies and/or practices
12 violate California law, including Labor Code § 2802, as they deny employees compensation or
13 reimbursement for all expenses incurred during the course of conducting business for their
14 employers.

15 E. That the Court find that Defendants have violated Labor Code §§ 201 and 202 for
16 willful failure to reimburse necessarily incurred business expenses upon termination of
17 employment to Plaintiffs and similarly situated Account Executives who have left Defendants'
18 employ.

19 F. That the Court find that Defendants have violated Business and Professions Code
20 § 17200 and committed unfair and unlawful business practices by failing to reimburse Account
21 Executives for necessarily incurred business expenses.

22 G. That the Court find that Defendants have violated Business and Professions Code
23 § 17200 and committed unfair and unlawful business practices by failing to pay waiting time
24 penalties to Account Executives who have left Defendants' employ.

25 H. That the Court find that Defendants' violations as described above were willful.

26 I. That the Court award to Plaintiffs and Class Members of the Class all unreimbursed
27 business expenses, and interest thereon, they are owed, subject to proof at trial;

J. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the Class due to Defendants' UCL violations, pursuant to Business and Professions Code §§ 17200-17205.

K. That Defendants further be enjoined to cease and desist from the unlawful activities alleged herein in violation of Business and Professions Code § 17200.

L. That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs pursuant to Labor Code §§ 2802, 218.5, 203 and Code of Civil Procedure § 1021.5, and/or other applicable law.

M. That the Court award such other and further relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: May 2, 2007.

Respectfully submitted,

~~HINTON, ALFERT & SUMNER~~

By *Frank*
AARON KAUFMANN

GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN

By Morris J. Baller
MORRIS J. BALLER
Attorneys for Plaintiffs

COHELAN & KHOURY

Attorneys for Plaintiffs

EXHIBIT B

PETER J. HINTON
PETER W. ALFERT
SCOTT H. Z. SUMNER
ELISE R. SANGUINETTI
AARON D. KAUFMANN
DAVID P. POGREL
JEREMY N. LATEINER

LAW OFFICES OF
Hinton, Alfert & Sumner
A PROFESSIONAL CORPORATION

1646 NORTH CALIFORNIA BOULEVARD
SUITE 600
WALNUT CREEK, CALIFORNIA 94596
TELEPHONE (925) 932-8006
FACSIMILE (925) 932-3412

May 14, 2007

Lawyers Incorporating Service
A Corporation Service Company
P. O. Box 526036
Sacramento, CA 95852

Re: Saidel & Fong vs. CBS Radio, et al.
Alameda County Superior Court No. PG07324137
Complex Determination Hearing: 6/20/2007
Case Management Hearing: 7/25/2007

Dear Lawyers Incorporating:

Enclosed please find a copy of the Notice of Hearing from the Alameda County Superior Court concerning the matter of *Saidel & Fong vs. CBS Radio, et al.* Please note the following hearing dates:

- Complex Determination Hearing: 6/20/2007 – 2:00 p.m.
- Case Management Hearing: 7/25/2007 – 2:00 p.m.

Very truly yours,

HINTON, ALFERT & SUMNER

Lani Hendricks
Lani Hendricks, Legal Assistant
to AARON KAUFMANN

Enclosure

Hinton, Alfert & Sumner
 Attn: Kaufmann, Aaron
 1646 North California Blvd.
 Suite 600
 Walnut Creek, CA 94596-4113

CBS Radio, Inc., a Delaware corporation

**Superior Court of California, County of Alameda
 Rene C. Davidson Alameda County Courthouse**

Saidel	Plaintiff/Petitioner(s)
VS.	
CBS Radio, Inc., a Delaware corporation	Defendant/Respondent(s)

(Abbreviated Title)

No. RG07324137

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:
 Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
 DATE: 06/20/2007 TIME: 02:00 PM DEPARTMENT: 20
 LOCATION: Administration Building, Fourth Floor
 1221 Oak Street, Oakland

Case Management Conference:
 DATE: 07/25/2007 TIME: 02:00 PM DEPARTMENT: 20
 LOCATION: Administration Building, Fourth Floor
 1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 4.2 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 20 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 272-6165. Please consult Appendix E to Local Rules 4 and 5 of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 20.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 20.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 20 by e-mail at Dept.20@alameda.courts.ca.gov or by phone at (510) 272-6165.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CONFERENCE CALL SERVICES, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 527-7327, or faxing a service request form to (800) 833-5133. This service is subject to charges by the vendor.

Dated: 05/10/2007

Executive Officer / Clerk of the Superior Court

By



Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 05/10/2007.

By



Deputy Clerk

SHORT TITLE: Saidel VS CBS Radio, Inc., a Delaware corporation	CASE NUMBER: RG07324137
---	----------------------------

ADDITIONAL ADDRESSEES

Saperstein, Goldstein, Demchak & Baller
Attn: Baller, Morris J.
300 Lakeside Drive,
Suite 1000
Oakland, CA 94612

Cohelan & Khoury
Attn: Singer, Michael D.
605 C Street
Suite 200
San Diego, CA 92101-5305



CORPORATION SERVICE COMPANY

Notice of Service of Process
 CXT / ALL
 Transmittal Number: 5151073
 Date Processed: 05/17/2007

Primary Contact: Anthony Bongiorno
 CBS Corporation
 Corporate & Securities
 51 West 52nd Street (19-13)
 New York, NY 10019

Copy of transmittal only provided to: Naomi Waltman
 Susanna Lowy Esq.

Entity:	CBS Radio Inc. Entity ID Number 2029395
Entity Served:	CBS Radio, Inc.
Title of Action:	Saidei vs. CBS Radio, Inc.
Document(s) Type:	Notice of Hearing
Nature of Action:	Labor / Employment
Court:	Alameda County Superior Court, California
Case Number:	RG07324137
Jurisdiction Served:	California
Date Served on CSC:	05/16/2007
Answer or Appearance Due:	06/20/2007
Originally Served On:	CSC
How Served:	Regular Mail
Sender Information:	Lani Hendricks 925-932-6006

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
 CSC is SAS70 Type II certified for its Litigation Management System.
 2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

EXHIBIT C

06/05/07 05:33PM ONELEM CR-AS MORGAN LEWIS & BOCKIUS LLP 54421001 Pg 3/4
 JUN-05-2007 TUE 11:44 AM FAX NO. P. 02

ENDORSED
 FILED
 ALAMEDA COUNTY

1 REBECCA EISEN, State Bar No. 096129
 2 THERESA MAK, State Bar No. 211435
 3 M. MICHAEL COLE, State Bar No. 235538
 4 MORGAN, LEWIS & BOCKIUS, LLP
 5 One Market, Spear Street Tower
 6 San Francisco, CA 94105-1126
 Tel: 415.442.1000
 Fax: 415.442.1001
 reisen@morganlewis.com
 tmak@morganlewis.com
 mcole@morganlewis.com

07 JUN -5 PM 12:52

CLERK OF THE SUPERIOR COURT
 BY BARBARA C. YOUNG, DEPUTY

7 DARYL S. LANDY, State Bar No. 136288
 8 MORGAN, LEWIS & BOCKIUS LLP
 9 2 Palo Alto Square
 10 3000 El Camino Real, Suite 700
 11 Palo Alto, CA 94306-2212
 Tel: 650.843.4000
 Fax: 650.843.4001
 dlandy@morganlewis.com

12 Attorneys for Defendants
 13 CBS RÁDIO INC. (formerly known as "Infinity
 Broadcasting Corporation"), CBS CORPORATION,
 INFINITY BROADCASTING CORPORATION
 (erroneously sued as "Infinity Broadcasting Inc."),
 14 and VIACOM INC.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 COUNTY OF ALAMEDA

18 TERRY SAIDEL and GINA FONG,
 19 individually and on behalf of all others
 similarly situated,

Case No. RG07324137

ANSWER TO PLAINTIFFS' UNVERIFIED
 COMPLAINT

20 Plaintiffs,
 21 vs.
 22 CBS RADIO, INC., a Delaware
 23 corporation; CBS CORPORATION, a
 24 Delaware corporation; INFINITY
 25 BROADCASTING, INC., a Delaware
 corporation; VIACOM, INC., a Delaware
 Corporation; and DOES 1 through 10,
 inclusive.,

26 Defendants.

BY FAX

28
 MORGAN, LEWIS &
 BOCKIUS LLP
 ATTORNEYS AT LAW
 SAN FRANCISCO

1-SF/7556010.1

ANSWER TO UNVERIFIED COMPLAINT

10564939.MF - 6/5/2007 11:46:45 AM

1 REBECCA EISEN, State Bar No. 096129
2 THERESA MAK, State Bar No. 211435
3 M. MICHAEL COLE, State Bar No. 235538
4 MORGAN, LEWIS & BOCKIUS, LLP
5 One Market, Spear Street Tower
6 San Francisco, CA 94105-1126
Tel: 415.442.1000
Fax: 415.442.1001
reisen@morganlewis.com
tmak@morganlewis.com
mcole@morganlewis.com

7 DARYL S. LANDY, State Bar No. 136288
8 MORGAN, LEWIS & BOCKIUS LLP
9 2 Palo Alto Square
10 3000 El Camino Real, Suite 700
Palo Alto, CA 94306-2212
Tel: 650.843.4000
Fax: 650.843.4001
dlandy@morganlewis.com

12 Attorneys for Defendants
13 CBS RADIO INC. (formerly known as "Infinity
14 Broadcasting Corporation"), CBS CORPORATION,
INFINITY BROADCASTING CORPORATION
(erroneously sued as "Infinity Broadcasting Inc."),
and VIACOM INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

18 TERRY SAIDEL and GINA FONG,
19 individually and on behalf of all others
similarly situated,

Case No. RG07324137

**ANSWER TO PLAINTIFFS' UNVERIFIED
COMPLAINT**

Plaintiffs,

vs.

23 CBS RADIO, INC., a Delaware
corporation; CBS CORPORATION, a
Delaware corporation; INFINITY
24 BROADCASTING, INC., a Delaware
corporation; VIACOM, INC., a Delaware
25 Corporation; and DOES 1 through 10,
inclusive.,

Defendants.

1 Defendants CBS Radio Inc. (formerly known as "Infinity Broadcasting Corporation"),
 2 CBS Corporation (formerly known as "Viacom Inc."), Infinity Broadcasting Corporation
 3 (erroneously sued as "Infinity Broadcasting, Inc."), and Viacom Inc. (collectively, "Defendants")
 4 hereby answer and respond to Plaintiffs' Complaint as follows:

5 Pursuant to California Code of Civil Procedure section 431.30(d), Defendants deny
 6 generally each and every allegation contained in Plaintiffs' Complaint, and deny further that
 7 Plaintiffs have been injured in the amount or manner alleged or in any other manner whatsoever.

8 WHEREFORE, Defendants assert the following affirmative defenses and pray for
 9 judgment as set forth below.

10 **FIRST AFFIRMATIVE DEFENSE**
 11 **(Failure to State a Cause of Action)**

12 1. As a separate affirmative defense to the Complaint and to every cause of action
 13 alleged therein, Defendants allege that the Complaint fails to state facts sufficient to constitute a
 14 cause of action against them.

15 **SECOND AFFIRMATIVE DEFENSE**
 16 **(Statutes of Limitations)**

17 2. As a separate affirmative defense to the Complaint and to every cause of action
 18 alleged therein, Defendants allege that Plaintiffs' claims, and the claims of each putative member
 19 of the purported class defined in the Complaint, are barred in whole or in part by the applicable
 20 statutes of limitations, including, but not limited to, the California Labor Code section 203,
 21 California Code of Civil Procedure sections 338 and 340, and California Business and
 22 Professions Code section 17208.

23 **THIRD AFFIRMATIVE DEFENSE**
 24 **(Estoppe)**

25 3. As a separate affirmative defense to the Complaint and to every cause of action
 26 alleged therein, Defendants allege that Plaintiffs' Complaint is barred in whole or in part by the
 27 doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE
(Waiver)

4. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that Plaintiffs' claims, and the claims of each putative member of the purported class defined in the Complaint, or some of them, are barred in whole or in part because such claims have been waived, discharged and/or abandoned.

FIFTH AFFIRMATIVE DEFENSE
(Accord And Satisfaction, Payment)

5. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants alleges that Plaintiffs' claims, and the claims of each putative member of the purported class defined in the Complaint, or some of them, are barred in whole or in part by the principles of accord and satisfaction, and payment.

SIXTH AFFIRMATIVE DEFENSE
(Release)

6. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that Plaintiffs' claims, and the claims of each putative member of the purported class defined in the Complaint, or some of them, are barred in whole or in part because said claims have been released by the individual(s) in question.

SEVENTH AFFIRMATIVE DEFENSE
(Failure To Exhaust Internal and Administrative Remedies)

7. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that Plaintiffs' statutory claims, and the claims of each putative member of the purported class defined in the Complaint, are barred to the extent they failed to exhaust their internal and/or administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE **(Laches)**

8. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that Plaintiffs' Complaint is barred in whole or in part by the doctrine of laches

NINTH AFFIRMATIVE DEFENSE **(Unclean Hands)**

9. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Plaintiffs' claims, and the claims of the putative members of the purported class, are barred in whole or in part by their unclean hands and/or inequitable or wrongful conduct.

TENTH AFFIRMATIVE DEFENSE
(Lack Of Standing)

10. As a separate affirmative defense to the Complaint and to the third cause of action alleged therein, Defendants allege that the named Plaintiffs and each of the putative members of the purported class as defined in the Complaint lack standing to bring claims brought pursuant to California Business and Professions Code Section 17200 against Defendant or to seek injunctive relief against Defendants.

ELEVENTH AFFIRMATIVE DEFENSE
(Adequate Remedy At Law)

11. As a separate affirmative defense to the Complaint and to the third cause of action alleged therein, the Defendants allege that Plaintiffs' causes of action and those of the purported class brought pursuant to California Business and Professions Code Section 17200, are barred in that Plaintiffs and the purported class have an adequate remedy at law.

TWELFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

12. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Plaintiffs' monetary claims, and the claims of the putative members of the purported class, are barred in whole or in part because they have not appropriately nor adequately mitigated their alleged damages.

THIRTEENTH AFFIRMATIVE DEFENSE
(Setoff and Recoupment)

13. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that if Plaintiffs or any putative members of the purported class defined in the Complaint have sustained any damages, although such is not admitted hereby or

1 herein and is specifically denied, Defendants are entitled under the equitable doctrine of setoff and
 2 recoupment to offset all obligations of the Plaintiffs or putative class members owed to Defendants
 3 against any judgment that may be entered against Defendants.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 **(Conduct Reasonable and In Good Faith/Not Willful)**

6 14. As a separate affirmative defense to the Complaint, and to the second cause of
 7 action alleged therein, Defendants allege that if they are to have failed to pay Plaintiffs, and each
 8 putative member of the purported class defined in the Complaint, any amount due, which
 9 allegations Defendants deny, Defendants acted at all times on the basis of a good faith and
 10 reasonable belief that it had complied fully with California law. Consequently, Defendants'
 11 conduct was not willful within the meaning of Section 203 of the California Labor Code.

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 **(Waiting Time Penalties Not Recoverable After Filing of Action)**

14 15. As a separate affirmative defense to the Complaint, and to the second cause of
 15 action alleged therein, Defendants allege that the Complaint fails to state a claim for waiting time
 16 penalties under Labor Code Section 203 as no such penalties can continue after an action therefor
 17 is commenced.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 **(Waiting Time Penalties)**

20 16. The Complaint fails to state a claim for waiting time penalties under Labor Code
 21 Section 203, in that some of the members of the purported class did not resign, were not
 22 discharged or did not quit prior to the filing of this action.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 **(All Wages Paid)**

25 17. As a separate affirmative defense to the Complaint, and to the second and third
 26 causes of action alleged therein, Defendants allege that the Complaint fails to state a claim for
 27 waiting time penalties under Labor Code Section 203 as all wages due and owing were timely
 28 paid.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Not Appropriate For Class Action)

18. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that the Complaint fails to satisfy any of the prerequisites for class certification.

NINETEENTH AFFIRMATIVE DEFENSE
(Due Process/Class Certification)

19. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that certification of a class would constitute a denial of its due process rights in violation of the United States Constitution and of the California Constitution.

TWENTIETH AFFIRMATIVE DEFENSE
(Lack of Injury or Damages)

20. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that Plaintiffs' monetary claims, and the claims of the putative members of the purported class as defined in the Complaint, are barred in whole or in part because they have not suffered injury or damage as a result of any actions allegedly taken by Defendants.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim Under California Business and Professions Code §§ 17200 et. seq.)

21. As a separate affirmative defense to the Complaint, and to the third cause of action alleged therein, Plaintiffs and the putative class members of the purported class as defined in the Complaint have no private right of action under California Business and Professions Code §§ 17200, *et. seq.*, because Plaintiffs and the putative class members have not suffered injury in fact and have not lost money or property as a result of any alleged unfair competition.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Irreparable Harm)

22. As a separate affirmative defense to the Complaint and to every cause of action alleged therein, Defendants allege that Plaintiffs' claims for injunctive, declaratory, or other equitable relief, and the claims of the putative class members of the purported class as defined in

1 the Complaint, are barred in light of the fact that Plaintiff and the putative class members have
 2 not suffered and will not suffer irreparable harm due to any alleged conduct of Defendants.

3 **RESERVATION OF RIGHTS**

4 Defendants have not completed their investigation of the facts of this case, have not
 5 completed discovery in this matter, and have not completed their preparation for trial. The
 6 affirmative defenses asserted herein are based on Defendants' knowledge, information, and belief at
 7 this time, and Defendants reserve the right to modify or amend these affirmative defenses or assert
 8 such additional affirmative defenses that may appear and prove applicable during the course of this
 9 litigation.

10
 11 WHEREFORE, Defendants prays for judgment as follows:

12 1. That Plaintiffs take nothing by the Complaint;
 13 2. That judgment be entered against Plaintiffs and in favor of the Defendants;
 14 3. That Defendants be awarded attorneys' fees incurred herein;
 15 4. That Defendants be awarded costs of suit herein; and
 16 5. For such other and further relief as the Court deems just and proper.

17
 18 Dated: June 5, 2007

MORGAN, LEWIS & BOCKIUS LLP

20 By _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____
 26 _____
 27 _____
 28 _____

Rebecca Eisen
 Attorneys for Defendants
 CBS RADIO INC. (formerly known as
 "Infinity Broadcasting Corporation"), CBS
 CORPORATION, INFINITY
 BROADCASTING CORPORATION
 (erroneously sued as "Infinity Broadcasting
 Inc."), and VIACOM INC.

1 **PROOF OF SERVICE**2 I am a resident of the State of California and over the age of eighteen years, and not a
3 party to the within action; my business address is One Market, Spear Street Tower, San
Francisco, California 94105-1126.

4 On June 5, 2007, I served the within document(s):

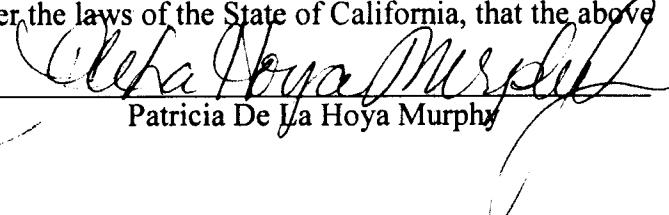
5 1. CIVIL COVERSHEET
6 2. NOTICE OF REMOVAL of ACTION TO THE UNITED STATES
7 DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA8 by transmitting via facsimile the document(s) listed above to the fax number(s) set
9 forth below on this date before 5:00 p.m.
10 by placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, in the United States mail at San Francisco, California addressed as
12 set forth below.
13 by placing the document(s) listed above in a sealed _____ envelope and
14 affixing a pre-paid air bill, and causing the envelope to be delivered to a
15 _____ agent for delivery.
16 by causing the document(s) listed above to be personally delivered to the person(s)
17 at the address(es) set forth below.
18 by transmitting via electronic mail the document(s) listed above to each of the
19 person(s) as set forth below.20 Aaron Kaufmann
David P. Pogrel
21 HINTON, ALFERT & SUMNER
1646 California Blvd., Suite 600
Walnut Creek CA 94596
22 Tel: 925-932-6006
Fax: 925-932-341223 Morris J. Baller
GOLDSTEIN, DEMCHAK, BALLER, BORGES &
DARDARIAN
300 Lakeside Drive, Suite 1000
Oakland CA 94612
24 Tel: 510-763-9800
Fax: 510-835-141725 Michael Singer
Christopher Olsen
COHELAN & KHOURY
605 "C" Street, Suite 200
26 San Diego CA 92101
Tel: 619-595-3001
Fax: 619-595-300028 MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
SAN FRANCISCO
1-SF/7559010.1

ANSWER TO COMPLAINT

1 I am readily familiar with the firm's practice of collection and processing correspondence
2 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
3 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

4 Executed on June 5, 2007, at San Francisco, California.

5 I declare under penalty of perjury, under the laws of the State of California, that the above
6 is true and correct.

7 
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Patricia De La Hoya Murphy